IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16469 of 2003
With
SPECIAL CIVIL APPLICATION No. 16470 of 2003

For Approval and Signature:

HON'BLE MR JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHREYAS SHANTILAL SHAH - Petitioner(s)

Versus

STATE OF GUJARAT & 7 - Respondent(s)

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Appearance :

MR AJ PATEL for Petitioner

GMR KB TRIVEDI, AAG, WITH MS.SANGITA VISHEN, AGP for Respondent No: 1.

RULE SERVED for Respondent No(s).: 2 - 5.

Deleted - Respondent No(s).: 3/2 and 4.

MR KV SHELAT for Respondent No(s).: 3/1

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CORAM : HON'BLE MR JUSTICE AKIL KURESHI

Date : 21/07/2005

ORAL JUDGMENT

At the outset, learned advocate Shri K.V.Shelat

submitted that though he had filed vakalatnama on behalf of respondent No.3/1 and 3/2 in both the petitions, said vakalatnama was signed by the power of attorney holder of these respondents. He submitted that thereafter there have been internal disputes between the said two respondents and respondent No.3/2 had orally instructed Shri Shelat not to appear for him. There is nothing on record to take cognizance of this development, however, learned advocate for the petitioner in both the petitions, to avoid any controversy, seeks permission to delete respondent No.3/2. Learned advocate for the petitioner also seeks permission to delete respondent No.4. Permission granted.

2. In the present petition the petitioner, who is common in both the petitions, has challenged the order passed by the Deputy Collector on 7th August 2003 as also the order passed by the Joint Secretary (Appeals), Revenue Department, Government of Gujarat, by which the order of the Deputy Collector came to be confirmed.

3. Brief facts leading to the present petitions are that land bearing survey No.1084 of village Vejalpur, Taluka City District: Ahmedabad admeasuring 2 hectares 9 Are 43 sq. meters was originally held by one Nathiben

widow of Atmaram Muljibhai. By two separate registered sale deeds, two pieces of land admeasuring 25 Are each came to be sold to one Keshavlal Somnath Gajjar in the year 1981. Necessary entries in this regard were also made in the revenue records being mutation entry Nos.4420 and 4421 both dated 6.7.81. These entries were certified on 11.8.81. The lands in question thereafter came to be sold by Shri Keshavlal Somnath to Shri Shantilal Manilal and entries in this regard also came to be certified, being entry No.5181 on 23rd May 1985. In turn, said Shri Shantilal Manilal sold the land in question in favour of one Shri Shreyans Shantilal Shah in the year 1987 and mutation came to be certified on 3.4.87. It appears that thereafter, the Deputy Collector finding that from the very inception there has been breach of the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act (hereinafter to be referred to as “the said Act”) initiated proceedings under the provisions of the said Act by issuing notices to the parties and registering two separate cases being Consolidation Case Nos.3/03 and 4/03. It appears that for the above mentioned transactions, notices under the provisions of the said Act came to be issued for the first time in the year 2003. The petitioner herein who was also served with a notice by the Deputy Collector contested the

proceedings. The Deputy Collector, however, holding that the very first sale transaction entered into between the parties in the year 1981 was opposed to the provisions of the said Act as the land was fragmented and fragments were sold by the original land owners, was pleased to annul the said sale transaction of 1981 and all subsequent sale transactions pertaining to the lands in question.

4. Aggrieved by the said order passed by the Deputy Collector on 7th August 2003, the petitioner herein preferred revision application before the Joint Secretary (Appeals). The revision application filed by the petitioner, however, was rejected by the Joint Secretary by his order dated 14.11.03. In the revision application, the petitioner strongly urged that the first sale transaction for the land in question had been entered into between the parties in 1981 and that therefore, the Deputy Collector could not have taken the transaction in question under review after such an inordinate delay especially when number of subsequent developments had taken place. It was urged that after 1981, the lands were sold on number of occasions and large amount of money has been spent in developing the land in question. The Joint Secretary, however, turned

down the contentions raised on behalf of the petitioner. He was pleased to come to the conclusion that the very first sale transaction entered into the year 1981 with respect to the lands in question was a nullity and all subsequent sale transactions therefore, would also be illegal. He concluded that by mere passage of time, the transactions cannot be saved.

5. Appearing for the petitioner, learned advocate Shri A.J.Patel contended that though there are large number of contentions raised by the petitioner, both the petitions can be considered only on the ground of gross and inordinate delay on the part of the authorities in seeking to reopen the sale transactions of the year 1981. He pointed out number of decisions of this Court in which it is held that such powers should not be exercised after a reasonable period of time. He contended that the first sale transaction which is sought to be nullified by the authorities as being opposed to the provisions of the said Act was entered into in the year 1981 and the notices were issued by the Deputy Collector for the first time in the year 2003. He contended that after the first sale transaction in the year 1981, there were series of sale transactions with respect to the lands in question. The petitioner had also spent substantial amount in

developing the land in question. He, therefore, submitted that it was not open for the authorities to reopen the sale transaction of the year 1981 by issuing notice for the first time in the year 2003. He also pointed out that for other sale transactions entered into the revenue records, the mutation entries were duly certified. The initial sale transaction of the year 1981 and all subsequent sale transactions were therefore well within the knowledge and notice of the revenue authorities. He, therefore, submitted that this is an additional reason why examination of legality of such transaction should not be permitted at such a distant point of time.

6. Appearing for the State Government, learned Additional General Shri K.B.Trivedi sought to support the orders passed by the authorities below. He submitted that sale transactions of the year 1981 were opposed to the provisions of the said Act and the original owner had created a fragment and had sold fragments in favour of the purchasers. Such transactions being opposed to the provisions of the said Act were null and void and no right, title or interest would pass in favour of the said buyer nor in favour of any subsequent buyers. Learned advocate Shri Shelat appearing for respondent No.3/1 also

sought to support the impugned orders.

7. Though when the issue was decided by the Joint Secretary, there were decisions of this Court which were relied upon by the learned advocate for the petitioner to the effect that powers of revision or sou motu review or power to examine the legality of any transaction where the legislation does not lay down any time limit should be exercised within reasonable time and that such powers cannot be exercised at any point of time after inordinate delay, there were also certain decisions of this Court which suggested that, however, in case of transaction which is void ab-initio, its legality can be examined without any reference to time limit, this question need not detain this Court any longer since under similar circumstances, a Division Bench of this Court in the case of Valjibhai Jagjivanbhai v. State of Gujarat, 2005 (2) GLH 34 has in terms held that powers exercised by the authorities under the provisions of the said Act cannot be permitted to be exercised at a belated stage and powers under section 9(2) and 9(3) of the said Act have to be exercised within a reasonable time especially when the authorities have considerable opportunities to know about the transactions. The said decision was rendered in the background of the provisions of the said Act and

the ratio laid down therein would apply to the facts of the present case on all fours. It is also pointed out on behalf of the petitioner that the decision of the Division Bench in the case of Valjibhai (supra) was carried in appeal before the Hon'ble Supreme Court and the appeal has also been rejected. In the present case also I find that there were ample opportunities for the authorities to have noted the sale transactions which took place between 1981 and 1987. At no stage, any proceedings were initiated against any of the parties. It was for the first time in the year 2003 that the first notice under the provisions of the said Act came to be issued by the Deputy Collector contending that the sale transaction of the year 1981 was opposed to the provisions of the said Act and therefore null and void. In between number of times, the land was sold and development had also taken place which would render the exercise of powers impermissible as laid down by the Division Bench of this Court in the case of Valjibhai (supra).

8. In the result, solely on the ground that initiation of the proceedings under the provisions of the said Act being grossly belated without there being any explanation on record, I am inclined to quash and set aside the

orders passed by the Deputy Collector and the Joint Secretary.

9. Consequently, by allowing the petitions, the impugned orders dated 7th August 2003 passed by the Deputy Collector in Consolidation Case No.3/03 and 4/03 as well as the order dated 14th November 200 passed by the Joint Secretary in Revision Applications being Con./Amd/1/2003 and 2/2003 are hereby quashed and set aside. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)